IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 706 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

AMIRDAN AKHERAJ KHADIA

Appearance:

1. Special Civil Application No. 706 of 1992

Mr.K.P.Raval, AGP for Petitioner No. 1

MRS SANGEETA N PAHWA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/08/2004

ORAL JUDGEMENT

1.0 By way of this petition, the Executive Engineer Machhu-1 project has challenged the judgment and award dated 24th July, 1990 of the Labour Court in Reference

L.C.R No.1636 of 1986, whereby the termination of the respondent dated 30-5-1985 was cancelled and the respondent was restored to his original post with continuity of service and full back wages.

2.0 Mr. Raval for the petitioner contended that the respondent was appointed on 2nd May, 1985 for 29 days and that too for a particular project and as per the evidence on record that project was over on 1st October, 1989 and in spite of that the Labour Court has wrongly granted reinstatement with 100% backwages. When the matter was admitted on 3rd February, 1992, this Court had granted ad interim relief in terms of para 4(C). However, the respondent-workman has preferred application for modification and vacation of interim relief for benefits under Section 17B pursuant to which the respondent-workman is reinstated in service.

3.0 In my view the order of the Labour Court directing reinstatement of the respondent-workman is perfectly justified since as and when the work was available the petitioner-Executive Engineer ought to have offered the same to the respondent-workman as required under the provisions of 25H of the Industrial Disputes Act. Therefore, in case the respondent-workan is yet not reinstated, he is required to be reinstated and should be paid from publication of award of Labour Court.

4.0 So far as the next question of back wages is concerned, the Labour Court has committed an error inasmuch as the appointment was for a fixed period under the provisions of Section 2(oo)(bb) of the I.D.Act which would not amount to retrenchment, and therefore, the petitioner is not required to follow the procedure of Section 25F of the I.D.Act. since it was fixed appointment, and as such, there is no question of granting back wages to the respondent-workman.

5.0 However, it appears that vide order dated 5th May, 1994 passed in Civil Application no.1254 of 1994 the respondent workman is already ordered to be reinstated and will be granted benefits pursuant to the Government Resolution dated 17th October, 1998.

6.0 In the result, the order of the Labour Court is modified to the extent that the respondent-workman be reinstated to his original post with continuity of service but without back wages and will be given all the benefits flowing from the Government Reolutiom dated 17th October, 1998.

6.1 The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent.

(K.S.Jhaveri,J.)

stanley-ksj.